

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SALES TAX REFERENCE No. 8 of 1993****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG****HONOURABLE MR.JUSTICE D.H.WAGHELA**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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COMMISSIONER OF SALES TAX - Applicant(s)**Versus****GUJARAT FERTILIZERS - Respondent(s)**

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Appearance :

Mr Sunit Shah, GOVERNMENT PLEADER for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR JUSTICE R. S. GARG**and****HONOURABLE MR JUSTICE D.H. WAGHELA****Date : 09/10/2006****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE R.S.GARG)**

1. The Gujarat Sales Tax Tribunal at Ahmedabad has made Reference under section 69 of the Gujarat Sales Tax Act on the following questions of law for the

opinion of this Court which arise out of Reference Applications No.39,40 & 41 of 1987 in Revision Applications No.19,20 & 21 of 1984:

“(1) Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that Gypsum in question would be covered under Residuary entry 13 of Schedule III of the Act and not under entry 24 in Schedule I to the Act ?,

(2) If the answer to question No.1 is in the affirmative i.e. In favour of the assessee, whether on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that the set off under the provisions of Rule 42 of the Gujarat Sales Tax Rules, 1970 would be admissible on purchases of 'gypsum' and whether the Tribunal is justified in granting set off ?

It is to be noted that the Reference Application was made by the State Government on being dissatisfied by

the order passed by the Tribunal.

2. The first question in its form says that whether the Tribunal was justified in law in holding that the Gypsum in question would be covered under Residuary entry 13 of Schedule III to the Act and not under entry 24 in Schedule I to the Act. The State Government had submitted to the Tribunal that gypsum would fall under entry 13 of Schedule III and the question has been decided by the Tribunal in favour of the State Government. The second question referred to us is that if the answer to question No.1 is in the affirmative i.e. in favour of the assessee, whether in the facts and circumstances, the Tribunal was justified in law in holding that the set off under the provisions of Rule 42 of the Gujarat Sales Tax Rules, 1970 would be admissible on purchase of gypsum. When the first question has been answered in favour of the State and assuming as if it has been answered in affirmative even by us, then the second question would not arise.

3. Shri Shah, learned counsel for the State submits that the real controversy before the Tribunal was whether gypsum would be taken to be a manure or a chemical or a component of chemical fertilizer and whether its use would decide the entry in which it shall fall. He submits that the submission of the State before the Tribunal was that gypsum being a mineral or a chemical, may fall under one or the

other entry but its use by a particular entrepreneur or a person would not decide its fate that within what entry it would fall.

4. In our opinion when such question has not been referred to us, we are unable to answer such question. The questions referred to us even at the instance of the State Government could not be referred to us because the State is saying that gypsum, as an article, would fall within entry 13 of Schedule III to the Act and not under entry 24 in Schedule I. We refuse to answer the Reference.

[R. S. Garg, J.]

[D. H. Waghele, J.]

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